Supreme Court, U. S.
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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1341

PETER W. BOWMAN, M.D., *Appellant*

v.

MAINE STATE EMPLOYEES
APPEALS BOARD, et al.
Appellees

On Appeal from the
Supreme Judicial Court of Maine

MOTION TO DISMISS OR AFFIRM

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move the Court to dismiss this appeal on the ground that the question is so unsubstantial as not to warrant further argument.

QUESTIONS PRESENTED

1. Whether P.L. 1971, Chapter 350 is a law impairing the obligation of contracts under Article I, § 10 of the Constitution of the United States.

2. Whether application of P.L. 1971, c. 350 to Dr. Bowman violated concepts of Due Process under the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

The decision of the Supreme Judicial Court is plainly correct. In 1971, the Appellant, Peter W. Bowman, M.D., was a classified state employee, serving as Superintendent of Pineland Hospital and Training Center. P.L. 1971, ch. 350 removed Dr. Bowman's position and the Superintendent positions of the Augusta Mental Health Institute and the Bangor Mental Health Institute from the classified state service and created a 4-year term in the unclassified state service for each Superintendent position. Dr. Bowman was not appointed to the unclassified Superintendent of Pineland position by the Commissioner of the Department of Mental Health and Corrections. He appealed to the Maine State Employees Appeals Board, which rejected his appeal. Dr. Bowman then sought review of the Board's decision by filing an appeal pursuant to M.R.Civ.P. Rule 80B in the Maine Superior Court. A Justice of the Maine Superior Court ruled that the Board had correctly decided that no First and Fourteenth Amendment rights had been violated and denied the action. Dr. Bowman then appealed to the Maine Supreme Judicial Court, asking that Court to determine the constitutionality of P.L. 1971, ch. 350 in light of the Contracts Clause (Art. I, § 10) and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. On December 4, 1979, the Maine Supreme Judicial Court unanimously denied Dr. Bowman's appeal, concluding that P.L. 1971, ch. 350 did

not violate the Contracts or Due Process Clauses of the Maine and United States Constitutions. The Court found that Dr. Bowman did not have a contractual relationship with the State of Maine governing his employment at Pineland which was protected by either the Contract Clause in the Maine Constitution or that of the United States Constitution. Finding that Dr. Bowman did not have a contractual right to continued employment and that P.L. 1971, ch. 350 was rationally related to a legitimate legislative purpose, the Court found no violation of due process. *Peter W. Bowman, M.D. v. Maine State Employees Appeals Board, et als.*, 408 A.2d 688, 689, 692, 693 (Me. 1979) (hereinafter cited as "*Bowman*").

ARGUMENT

1. *Public Law 1971, Chapter 350 Is Not a Law Impairing the Obligation of Contracts under Article I, § 10 of the Constitution of the United States.*

Contrary to Dr. Bowman's assertion, no substantial federal question is presented for review in this case. *See Zucht v. King*, 260 U.S. 174 (1922).

This controversy, properly postulated, depends upon a contract between Dr. Bowman and the State of Maine. It was in search of this contract that the Maine Supreme Judicial Court began its analysis of Dr. Bowman's claims. In asking itself the threshold question: — ". . . whether a contractual relationship had in fact existed between Dr. Bowman and the State," *Bowman*, 408 A.2d at 689, the Maine Court followed the long-tested approach of this Court, *United States Trust Co. v. New Jersey*, 431 U.S. 1, 17 (1977), and the approach used by a three-judge District Court in deciding a challenge from several Massachusetts Judges asserting federal constitutional and due process violations of a recent Massachusetts statute mandating an age seventy retirement. *Kingston v. McLaughlin*, 359 F. Supp. 25 (D. Mass. 1972); *Bowman*, 408 A.2d at 689.

Dr. Bowman's assertion of a statutory contract founded upon reliance is a forced and unnatural assumption that reliance upon a statutory scheme for appointing public officers creates a contract within the constitutional sense. It is not perceived how this fiction can convert the statutes of Maine into a contract granting Dr. Bowman the right to public office in perpetuity secured within the meaning of the United States Constitution, Article I, § 10, Clause I. The approach used by the Maine Court shatters the fiction and bares the central issue. By using the approach used by the three-judge District Court in *Kingston* and by this Court in *United States Trust Co.*, the Maine Court did not leap from hypothetical to conclusion. It reached its unanimous judgment by reasoned analysis of fact and law. Its judgment is

founded not upon tacit assumptions, but upon long-standing legal principles. The judgment of the Maine Court displays a thorough acquaintance with the central problems of law raised by this case and a thorough understanding of the basic concepts and presumptions which shape the approach of our courts to these problems. There is no application of substantive law *in vacuo* here; on the contrary, the Maine Court has, by its judgment, shown understanding application of the "law of the case" and intelligent grasp of the significance of this Court's decisions.

It is fundamental to Dr. Bowman's assertion that a contractual relationship existed between him and the State of Maine, for, as the Maine Court pointed out, "If there was (sic) no such relationship, then Dr. Bowman's dismissal could not violate any rights he then had as a member of the classified service. Furthermore, if his position was not constitutionally protected, the 1971 Legislature was free to enact Chapter 350 without regard to its application to Dr. Bowman." *Bowman*, 408 A.2d at 689. The Maine Court determined that Dr. Bowman did not have an employment relationship with the State of Maine protected by the Contract Clause of the Maine Constitution or of the Constitution of the United States. *Bowman*, 408 A.2d 691. In making this determination, the Maine Supreme Judicial Court carefully considered this Court's decisions, its own decisions, and the decisions of the courts of last resort of several of its sister states. *Bowman*, 408 A.2d at 689-693.

Dr. Bowman now asks this Court to ignore the construction given to P.L. 1971, ch. 350 by the Maine Supreme Judicial Court and to impose a new construction upon that statute totally foreign to the *stare decisis* of the State of Maine and of this Court. Dr. Bowman argues that his claim is identical to and controlled by this Court's decision in *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95 (1938). In so arguing, Dr. Bowman disregards all the features distinguishing his claims from those in *Indiana ex rel. Anderson v. Brand*, as well as the standards established by this Court. *Indiana ex rel. Anderson v. Brand* was distinguished from *Bowman* by the Maine Court because the contractual relationship in *Anderson* was long recognized by the courts of Indiana. *Bowman*, 408 A.2d at 690. *Anderson* can be further distinguished by this Court's recognition that the statute in question was written in terms of a contract between the teachers and the State of Indiana, was couched in contract terms and was intended to create a contract. *Anderson*, 303 U.S. at 104-109. No such circumstances exist in this case.

The Maine Supreme Judicial Court properly interpreted the decisions of this Court in distinguishing *Anderson* and in relying upon its own ability to construe the statutes of Maine. *See Phelps v. Board of Education*, 300 U.S. 319, 322-323 (1937); *Dodge v. Board of Education*, 302 U.S. 74, 78-79 (1937); *United States Trust Co. v. New Jersey*, 431 U.S. 1, 18 (1977).

The Maine Supreme Judicial Court properly determined that no employment relationship existed between Dr. Bowman and the State of Maine which was protected by the Contract Clause of the Maine and United States Constitutions. The Maine Court, quoting the Supreme Court of California which construed a similar enactment in a similar factual context, said:

> "[P]ublic employment is not held by contract but by statute and that, insofar as the duration of such employment is concerned, no employee has a vested contractual right to continue in employment beyond the time or contrary to the terms and conditions fixed by law. . . . Nor is any vested contractual right conferred on the public employee because he occupies a civil service position since it is equally well settled that '[t]he terms and conditions of civil service employment are fixed by statute and not by contract.'" quoting *Miller v. State*, 135 Cal. Rptr. 386, 389, 557 P.2d 970, 973

(1977), quoting *Boren v. State Personnel Board*, 37 Cal. 2d 634, 641, 234 P.2d 981, 985 (1951). *Bowman*, 408 A.2d at 691.

2. *Application of Public Law 1971, Chapter 350 to Dr. Bowman Did Not Violate Concepts of Due Process under the Fourteenth Amendment to the Constitution of the United States.*

Dr. Bowman contends that "... the Maine Court failed to appreciate the substance of [his] legitimate entitlements arising from the State's own statutes, rules and regulations [and that] [t]hose entitlements clearly qualify for protection under the Fourteenth Amendment...." (Jurisdictional Statement at 15).

The Maine Supreme Court fully appreciated and squarely addressed Dr. Bowman's Fourteenth Amendment Due Process contentions (*Bowman*, 408 A. 2d at 691-693) both as they related to his contract assertions and as they may have existed separately.

The Maine Court determined that P.L. 1971, ch. 350: (1) was validly enacted; (2) did not violate the Contract Clause of the Maine or United States Constitutions; (3) was rational; and, (4) was rationally related to a legitimate legislative purpose. *Bowman*, 408 A.2d at 691-693.

The Maine Court also determined that when Dr. Bowman's contract assertions collapsed, his due process assertions predicated on the contract premise also collapsed. *Bowman*, 408 A.2d at 692-693. Finally, the Maine Court determined that no property right to state employment exists in Maine and that Dr. Bowman's position as Superintendent of Pineland Hospital was a public office created for the benefit of the State subject entirely to legislative control.

The Maine Supreme Judicial Court concluded with these words:

"Dr. Bowman's due process arguments must

fail. As was the situation in *Kingston v. McLaughlin*, 359 F. Supp. 25 (D. Mass. 1972), the root from which these due process contentions sprout is the premise that Dr. Bowman's position was contractually secured, a premise we have here disavowed. The foundation of the due process argument having been eliminated, the argument itself must collapse.

"The South Carolina Court has used appropriate language:

> 'Public officers are created for the benefit of the commonwealth, incumbents have no contract or property rights in them, and, unless it be otherwise provided by the Constitution, they are subject entirely to legislative control. Hence, subject to the Constitution, the General Assembly may fix the term, provide for removal abolish the office, reduce the term, and in every respect control the existence, powers, emoluments, and tenure of public officers.' *Wright v. City of Florence*, 229 S.C. 403, 93 S.E.2d 215, 220 (1956), quoting *State v. Rhame*, 92 S.C. 455, 75 S.E. 881, 883 (1912)." *Bowman*, 408 A.2d at 692-693.

The due process determinations of the Maine Court were proper and correctly interpret the relevant decisions of this Court, *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *Nebbia v. New York*, 291 U.S. 502 (1934); and, *Ferguson v. Skrupa*, 372 U.S. 726 (1963), in finding P.L. 1971, ch. 350 reasonable and rationally related to a legitimate legislative purpose; and, *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Bishop v. Wood*, 426 U.S. 341 (1974); *Perry v. Sindermann*, 408 U.S. 597 (1972); and, *Codd v. Velger*, 429 U.S. 624 (1977), in finding no protected property interest.

Dr. Bowman's contentions of a contractual relationship with the State of Maine protected by Art. I, Section 10 or a

property interest in his state employment protected by the Fourteenth Amendment are so lacking in merit that they fail to satisfy this Court's requirement of substantiality, *Zucht v. King*, 260 U.S. 174, 176 (1922) and should, therefore, be dismissed.

CONCLUSION

I respectfully submit, for the reasons set out above, that the Appellant presents no substantial question for the decision of this Court and, therefore, this Court should dismiss this appeal or affirm the final judgment of the Supreme Judicial Court of Maine.

Respectfully submitted,

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March 28, 1980

CERTIFICATE OF SERVICE

I, Robert J. Stolt, hereby certify that on this 28th day of March, 1980, I served on the Appellant, according to Rule 33, three copies of the Motion to Dismiss or Affirm in the above-captioned matter, by first-class mail, postage prepaid, addressed as follows:

E. Stephen Murray
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30 Exchange Street
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s/ Robert J. Stolt
ROBERT J. STOLT
Deputy Attorney General

STATE OF MAINE
KENNEBEC, SS. March 28, 1980

Then personally appeared the above-named Robert J. Stolt and made oath to the truth of the foregoing statements.

Before me,

s/ Elaine K. Chase
Notary Public